UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION TWENTY-FIVE

IRVING READY-MIX, INC.

and

CASES 25-CA-31485
25-CA-31490 Amended
25-CA-31548

CHAUFFEURS, TEAMSTERS & HELPERS
LOCAL UNION NO. 414, a/w INTERNATIONAL
BROTHERHOOD OF TEAMSTERS

RESPONDENT IRVING READY-MIX, INC.'S ANSWERING BRIEF TO ACTING GENERAL COUNSEL'S CROSS EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S DECISION

Respondent Irving Ready-Mix, Inc. ("Irving"), by counsel, hereby submits its Answering Brief to Acting General Counsel's Cross Exceptions To The Administrative Law Judge's Decision. Counsel for Acting General Counsel ("Counsel for AGC") essentially raises two issues by way of the cross exceptions and as argued in Acting General Counsel's Brief In Support Of Cross Exceptions ("Counsel for AGC's Brief"). Irving files its Answering Brief on those general issues.

A. The ALJ Had No Reason to Address the Issue of Whether the Union's Strike Was Caused and Prolonged by Irving's Alleged Unfair Labor Practices

Counsel for AGC takes issue with the Administrative Law Judge's ("ALJ") failure to address the issue of whether Irving's alleged unfair labor practices caused or prolonged the strike called by Chauffeurs, Teamsters & Helpers, Local Union No. 414, a/w International Brotherhood of Teamsters ("the Union"). However, Counsel for AGC fails to provide any facts to support such a determination or to explain why it would be necessary. Counsel for AGC provides only vague reference to employees and the Union being "entitled to such a finding and resulting protection afforded Unfair

Labor Practice Strikes over economic strikes." (AGC's Brief p.3). The facts of this case provide no support for that argument or these Cross Exceptions.

1. The "Cause of the Strike" Had Nothing To Do With Any Unfair Labor Practices.

First and foremost, Counsel for AGC admits that "the Union began a strike against the Respondent because the parties had failed to reach a new collective bargaining agreement prior to the expiration of the collective bargaining agreement on May 31 [2010]." (AGC's Brief, p.3). Drivers who testified at the hearing in this case agreed that the strike was caused due to a lack of a new contract. (Tr. at 12, 191, 222). In fact, Union bargaining committee member Andrew Fisher said that Irving's drivers were told by Union representatives at the meeting that they attended at the Union Hall on May 31, 2010, negotiations were over. (Tr. at 189-191). The choice presented was accept one of Irving's proposals or go on strike. (Tr. at 191). The strike followed. Therefore, the issue of what caused the strike is settled. It was not caused by any unfair labor practice on Irving's part.

2. The Facts of Record Do Not Support Counsel for ACT's "Strike Prolongation" Arguments

Counsel for AGC's assertion of events alleged to have occurred "throughout the duration of the strike" in support this cross exception include misrepresentations of the record and the ALJ's decision. Counsel for AGC's claim that Derek Ray, Irving's General Manager, asked a job applicant if he would be willing to cross the Union picket line concerned events alleged to have occurred on May 27, 2010, prior to the June 1 strike, not during the strike. (Tr. at 104).[1] As noted above, this alleged event was not a cause of the strike and, certainly, could not have prolonged it.

[1] Irving has taken exception to the ALJ's finding on this issue. See Respondent Irving Ready-Mix, Inc.'s Exceptions To Administrative Law Judge's Decision ("Irving's Exceptions") No. 10 at pp. 47-49).

Counsel for AGC alleges that on June 1, 2010, Irving sent letters to the Union and its employees notifying then that it was withdrawing recognition and/or representation from the Union. (AGC's Brief, p.3). Neither is accurate since the letters Irving sent indicated that Irving no longer had the obligation to recognize or bargain with the Unions following the termination of the parties' collective bargaining agreement. (*See* GCX 8 and 23)[2]. Regardless, those letters had nothing to do with any denial of "striker rights". Irving's June 1, 2010 letter to its striking employees specifically advised the drivers that they were still Irving employees and were "welcome to report to work." (GCX 8).

Counsel for AGC asserts that Irving's "failure to bargain in good faith with the Union" also caused and prolonged the strike. (AGC's Brief, p.3). However, the ALJ specifically found that "General Counsel has not shown that during the contract negotiations in May 2010 the Respondent bargained in bad faith." (ALJ's Decision, p.19, lines 23-24). No cross exception was filed regarding that finding and, therefore, the issue was waived pursuant to Section 102.46(b)(2) of the National Labor Relations Board Rules and Regulations. As a result, that alleged cause for the strike or its being prolonged, as raised in Counsel for AGC's Brief, is baseless and should be disregarded as being outside the scope of the cross exceptions raised by Counsel for AGC.

3. The Strike's Classification is Immaterial

Regardless of what caused the strike or if the strike went from being an economic strike to an unfair labor practice strike, the ALJ correctly determined that issue was not pertinent to the violations alleged in the Consolidated Complaint or relief sought by Acting General Counsel. See

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[2] The issue of Irving's obligation to recognize and bargain with the Union following the termination of the parties' collective bargaining agreement is the subject of Irving's Exceptions Nos. 4, 5, 6, 7, 8 and 9 at pp. 13-46.

ALJ's Decision at p. 12, lines 47-51. There was simply no claim of strike related misconduct alleged in the Consolidate Complaint. (See GCX 1(i)).

There is no issue in this case regarding any striking employee being denied the opportunity to return to work either during or at the conclusion of the strike. When asked at the hearing, striking employees testified that Irving never prevented them from returning to work during the strike and that Irving allowed them back to work when they asked to return. (Tr. at pp.128, 193, 223). Therefore, no question was presented to or needed to be resolved by the ALJ in terms of protection for unfair labor practice strikers as compared to economic strikers. The cases cited by Counsel for AGC are not pertinent to the instant case.

Unlawful discharge of strikers and withdrawal of recognition were proffered as reasons to show why an economic strike had converted to an unfair labor practice strike and was prolonged in American Linen Supply Co., 297 N.L.R.B. 137, 146 (1989). However, the trial examiner in that case found it unnecessary to pass on that issue as the remedy of reinstatement and back pay for unlawful discharged employees was suitable to remedy the wrong regardless of the strike's characterization. 297 N.L.R.B. at 146. The Board found it unnecessary to amend the trial examiner's Order on the issue because the remedy provided relief for the unlawful discharges. 297 N.L.R.B. at 138 fn 4.

Rose Printing Co., 289 N.L.R.B. 252 (1988) concerned reinstatement rights of employees permanently replaced by the employer before an economic strike transformed to an unfair labor practice strike. The record of the instant case is devoid of any evidence to show that any Irving employee was permanently replaced or denied reinstatement. The nature of the strike is inconsequential.

In Sanderson Farms, 271 N.L.R.B.1472, 1481 (1984), the issue of strike classification was relevant related to the reinstatement rights of the strikers upon unconditional offers to return to work. 271 N.L.R.B. at 1481. Unlike that situation, all of Irving's striking employees were promptly welcomed back to work upon their submission of an unconditional offer to return to work. (GCX 15 and 16). There were no reinstatement issues to resolve.

None of the unfair labor practice factors referenced in the quote from "Allied Mechanical Services, 332 N.L.R.B. 1600, 1609 (2001), also cited by Counsel for AGC, are present in this case. The instant case contains no allegation or finding of threatened termination of strikers, termination for failure of strikers to return to work, or any type of disciplinary action against a striker. All strikers were welcomed back to work either during the strike or at its end upon their making an unconditional offer to return to work. (Tr. at pp. 127-128; GCX 15 and 16).

Counsel for AGC's cross exceptions related to the ALJ's failure to address the issue of the purported cause of the strike and its prolongation are totally unsupported. The alleged need for such a finding is grounded on pure speculation regarding unidentified future events without any basis in fact concerning events of record in this case. As such, Irving respectfully submits that the ALJ had no foundation in fact and no reason for making a finding that Irving's conduct caused or prolonged the strike.

For all these reasons, Irving respectfully submits that Cross Exceptions 1 and 2 are meritless.[3] There is no basis in fact or reason for the Board to provide a remedy and Order that protects employee rights as unfair labor practice strikers when there is no claim or showing that

[3] Irving notes that at the end of the first sentence at the top of page 5 of Counsel for AGC's Brief, there is a footnote 2, but no related text appears at the bottom of that page.

employee rights as unfair labor practice strikes were ever drawn into issue or even threatened to be at issue.

B. The Claimed Failure to Provide A Remedy For Allegedly Unlawful Letters Is Unsupported

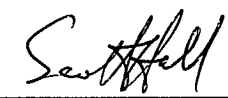
For the reasons noted in Irving's Exceptions Nos. 4, 5, 6, 7, 8 and 9, Irving contends that it had no obligation to recognize or bargain with the Union following the termination of its collective bargaining agreement with the Union on May 31, 2010. See Irving's Exceptions, pp. 13-46. For those reasons, Irving argues that is June 1 and June 14, 2010 letters to employees did not constitute a violation of Section 8(a)(1)(5) of the Act and that there is no basis to include reference to the rescission of those letters in the Order or Notice, as claimed by Counsel for AGC in Cross Exception No. 3. Irving respectfully submits that AGC's Cross Exception No. 3 should be denied.

CONCLUSION

For all these reasons, Irving respectfully requests that Counsel for AGC's Cross Exceptions be denied in their entirety and that Irving be granted all other relief available to it under the circumstances.

Respectfully submitted,

HALL & GOODEN LLP



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CERTIFICATE OF SERVICE

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